IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.136 of 1995

Krishnan .. Appellant

-Vs-

State through Inspector of Police
Thirukoilur
Villupuram Ramasamy Padayachi
District .. Respondent

This Criminal Appeal is preferred under S.374 of Code of Criminal Procedure against the judgment of the District and Sessions Judge, Villupuram made in S.C.No.40/94 dated 21.12.1994.

!For Appellant : Mr.V.Gopinath,
Senior Counsel for
Mr.Peppin Fernando

^For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

This criminal appeal is directed against the judgment of the Sessions Judge, Villupuram in S.C.No.40/94 wherein the appellant/accused was found guilty under S.302 of I.P.C. and awarded life imprisonment.

2. The appellant/accused stood charged for murder alleging that due to irrigation dispute, he attacked the deceased Gopal on his head with a koduval on 27.10.1992 in his field at Kaattu Edayyari; that the severely injured Gopal was admitted in the Government Hospital, and consequently, he died on 11.11.1992.

3. The short facts necessary for the disposal of this appeal, can briefly be stated as follows:

The appellant, the deceased Gopal and P.W.1 Arumugam, P.W.2 Inniyasi and P.W.3 Annadurai belonged to Kaattu Edayyari Village. On 27.10.1 992 P.Ws.1 to 3, the appellant and the deceased Gopal were carrying on their

agricultural operations in their respective fields. At about 4.30 P.M., the appellant diverted the water course to his field. Looking at this, the deceased requested him that he would wait for some time, so that he would get the required water. Despite the resistance, the deceased diverted the water course. Immediately, the appellant took M.O.1 koduval and gave a blow on his head, and the deceased fell down. The whole occurrence was witnessed by P.Ws.1 to 3. The appellant fled from the scene of occurrence. The witnesses carried the deceased to the nearby bus stop. On the way, they informed P.W.5 Unnamalai, the wife of the deceased and P.W.6 Chittravelu. The deceased was taken to the Government Hospital at Thirukoilur. P.W.4 Dr. Girija who was on duty at about 9.00 P.M. admitted the victim, examined him and found the following injuries.

1. Lacerated wound right side of scalp 3" x 1" x bone depth.
2. C/o pain right check

C/o Numbness of left hand.

Partial weakness of F1 F2 F3 present

Ex.P1 is the accident register in respect of the treatment given to the deceased. P.W.4 Doctor issued Ex.P2 intimation to Rishivandyam Police Station.

4. On receipt of Ex.P2 intimation, P.W.17 C.Selvaraj, Sub Inspector of Police, Rishivandyam Police Station, proceeded to the Government Hospital, Thirukoilur and recorded the statement of the deceased which is marked as Ex.P20 and registered a case in Cr.No.138/92 under S.32 4 of I.P.C. against the accused. He despatched Ex.P21 Printed First Information Report to the concerned Court. He recorded the statement of the victim which is marked as Ex.P22. He recorded the statement of the witnesses. At about 8.30 A.M. he proceeded to the site of incident, prepared Ex.P3 observation mahazar and Ex.P23 rough sketch in the presence of the witnesses P.W.7 Nagarajan and Murugesan. He recovered M.O.1 koduval under Ex.P4 mahazar. He enquired the other witnesses and recorded their statements. M.O.1 was despatched to the Court. Since the deceased sustained injuries on the head, P.W.8 Dr. Pugazhendhi attached to the Government Hospital, Thirukoilur sent the victim to Cuddalore Government Hospital. P.W.9 Dr.Ramachandran attached to Government Hospital, Cuddalore gave him treatment, and the case sheet in that regard is Ex.P7. P.W.10 Dr.Natarajan took x-ray on the skull of the victim, and those x-rays are marked as M.O.2. Finding the fracture on the skull of the victim, P.W.16 Dr.Venugopal opined that he should be given further treatment and recommended him to General Hospital, Madras. On 3.11.1992 at about 8.30 P.M., the victim was admitted in the General Hospital, Madras, and he was given effective treatment. Despite the same, he died on 11.11.1992 at 3.40 P.M. The case sheet was marked as Ex.P9. On receipt of Ex.P12 death intimation, P.W.17 Sub Inspector of Police altered the case into one under S.3 02 of I.P.C. Ex.P24 Express Report was despatched to the Court. On receipt of the copy of the F.I.R., P.W.18 Pandiarajan, Inspector of Police took up the investigation, and he verified the statements of the witnesses already recorded by P.W.17. He conducted the inquest on the body of the deceased Gopal between 1.00 P.M. and 3.00 P.M. and prepared Ex.P25 inquest report. He recorded the statements of the witnesses.

5. On receipt of Ex.P10 requisition from the Investigation Officer for postmortem, P.W.12 Dr.Vallinayagam commenced the postmortem at 11.15 A.M., conducted the autopsy and found the following injuries.

1. Abrasion on back of left shoulder 2 x 1 cm dark brown.
2. A curvy linear sutured wound 27 cms in length (black sutures) on the right fronto-parieto-temporal regions of scalp with an abrasion on its middle and inner aspects 2 x 1 cms. On dissection scalp tissues found cedematous.
A part of right fronto-parieto-temporal bones absent 8 x 6 cms (surgical)
A gel foam packing present beneath it. On dissection: A thin layer of pus present all over the brain.
A contusion on right fronto-parietal region of scalp 12 x 8 x 0.5 cms.
Contusion on right occipital region of scalp 4 x 3 x 0.5 cms dark red in colour.
Laceration present on right parieto-temporal region of brain 3 x 7 x 1 cms.
P.W.12 Doctor issued Ex.P11 postmortem certificate and has opined that the injuries found on the skull and the corresponding internal injury would have been caused by M.O.1 koduval, and the same would be sufficient to cause death.
6. The Inspector gave Ex.P14 requisition to the concerned Magistrate's court to send M.O.3 bloodstained dhoti for chemical analysis. Ex.P16 is the Chemical Analyst's report, while Exs.P17 and P18 are the Serologist's reports. On completion of the investigation, the Inspector filed the final report against the accused under S.302 of I.P.C.

7. In order to prove the charge levelled against the appellant/ accused, 18 witnesses were examined, and 25 exhibits and 3 material objects were marked. On completion of the prosecution evidence, the accused was questioned under S.313 of Code of Criminal Procedure, when he denied the versions of the prosecution witnesses as false. No defence witness was examined. After hearing the rival submissions and scrutiny of the available materials, the learned Sessions Judge found him guilty under S.302 of I.P.C. and awarded him life imprisonment. Aggrieved appellant has brought forth this appeal.
8. Arguing for the appellant, the learned Senior Counsel Mr.V. Gopinath would submit that the prosecution has not proved the motive for the crime; that there was an inordinate delay in lodging a complaint, since the occurrence has taken place on 27.10.1992 by 4.30 or 5.00 P. M.; that the Doctor attached to Thirukoilur Government Hospital has sent Ex.P2 intimation that night itself, but the statement of the victim was recorded at Thirukoilur Government Hospital only on the night of 28.10.1992; that the said statement recorded from the victim viz. Ex.P20, Ex.P21 printed first information report and Ex.P22 the statement of the victim recorded under S.161 of Cr.P.C. all have reached the Court only on 2.11.1992, but the prosecution has not explained this inordinate delay in any way; that P.Ws.1 to 3 are interested witnesses; that from the evidence of P.Ws.1 to 3 it would be abundantly that they could not have been in the place of occurrence; that there is no evidence to show that they had any lands where they can carry on their agricultural operations at the time of occurrence; that the lands alleged to have been cultivated by P.Ws.1 to 3 had not been shown in Ex.P23 plan; that P.W.1 did not state to the police that P.W.3 was cultivating land near the scene of occurrence; that the case was originally registered only under S.324 of I.P.C.; that though the alleged occurrence has taken place on 27.10.1992, the victim has died only on 11.11.1992, and thus, he survived nearly about 14 days, and the same would indicate that the injury that was caused was not so severe, and hence, it cannot be stated that it was a direct cause for his

death; that though the weapon of assault was recovered from the scene of occurrence, it was not sent for chemical analysis; that the prosecution has relied on Exs.P20 and P22 as dying declarations, and the Court of Sessions also attached much importance for those documents; that it is pertinent to note that in neither of the statements the attestation of the Doctor, who was present at the time or gave treatment to the victim was obtained, and hence, no importance could be attached to those documents. Added further the learned Senior Counsel that the prosecution had not proved the guilt beyond reasonable doubt; that there are no circumstances to convict the appellant; that the ingredients contemplated under S.302 of I.P.C. had not been proved; that it is pertinent to note that Ex.P1 medical certificate said to have been issued by P.W.4 Doctor on 27.10.1992 had reached the court only on 10.1 1.1994 as admitted by P.W.18; that the scene of occurrence is 10 kilometers from the police station; that it is admitted by P.W.4 that she sent Ex.P2 report to Rishivanthiam Police Station, and if so, the F.I.R. should have been registered on 27.10.1992 itself; that when P.W.4 sent the intimation to the police, there is no necessity for P.W.17 Sub Inspector of Police to get wireless message from Thirukoilur; that the lower court failed to consider the aspect about the delay in registering the F.I.R.; that it is pertinent to note that the Police Officer who received Ex.P2 at Thirukoilur Police Station had not been examined as a witness, and hence, there is doubt as to what time Ex. P2 reached Thirukoilur Police Station; that there is no initial or any intimation about at what time and date Ex.P2 was received, and under such circumstances, Ex.P2 is a false and fabricated document for the purpose of this case; that P.W.4 Doctor should have recommended for x-ray treatment even on 27.10.92; that no explanation was given by the prosecution as to why no x-ray was taken at Thirukoilur Government Hospital; that if the x-ray had been taken better treatment could have been given and the death of the victim might not have occurred; that it is the evidence of P.W.7 that the victim was sent to Cuddalore Government Hospital on 29.10.1992; that if the victim had been sent to that hospital immediately, he might have been given better treatment; that it is pertinent to note that the prosecution has not produced any document to show what treatment was given to the deceased on 27.1 0.1992, 28.10.1992 and 29.10.1992; that since the case sheet had not been produced from 27.10.1992 to 29.10.1992, it can be presumed that no proper treatment was given to the deceased; that though P.W.16 Doctor deposed that treatment was given to the deceased on 28.10.1994, no document has been produced by the prosecution in that regard; that a perusal of Ex.P9 case sheet would show that the deceased was not willing to undergo surgical operation on 4.11.1992, but the consent was given by the brother-in-law of the deceased only on 9.11.1992, and hence, there had been delay in operating the deceased; that it is pertinent to note that there was enmity between P.W.1 and the accused regarding the purchase of lands; that P.W.1 did not tell the police in 1 62 statement that the injured Gopal was conscious and told his wife that the accused cut him, and hence, the deceased could not have spoken to his wife or relative in the bus stop; that it is pertinent to note that the statements of P.Ws.1 to 3, 5 and 7 reached the court only on 13.11.1992; that the occurrence did not take place in the scene of occurrence as contended by the prosecution; that P.W.4 has stated in Ex.P1 that the deceased told her that the occurrence took place at the lake; that there was sufficient water in the lake, and hence there was no necessity for any quarrel over the letting out of water; that

P.W.5 has admitted that signatures were obtained in blank white papers, and thus, Exs.P20 and P22 were created only after the death of the victim by utilising the blank papers, where the signature of the deceased was obtained; that there is no mens rea or intention on the part of the accused to commit an offence under S.302 of I.P.C.; that there was no pre-planning to commit this offence; that according to P.W.6, the Rishivanthiam police examined the deceased at 9.30 P.M. on 2 7.10.1992 itself, but the prosecution case is that the deceased was examined on 28.10.1992 at 10 P.M., and thus, both cannot go together; that according to P.W.6, his brother P.W.5 was present when the deceased gave statement before the police, but P.W.5 says when the police recorded the statements of P.Ws.1 to 5, P.W.6 and Chandrahasu were not present, and hence, the evidence on the prosecution side cannot be believed at all; that the lower court without considering all the above aspects of the matter has erroneously found the appellant guilty, and hence, the judgment of the lower court has got to be set aside, and the appellant be acquitted of the charge.

9. Per contra, the learned Additional Public Prosecutor Mr.V.M.R. Ravindran would submit that the prosecution has clearly proved the occurrence by adducing cogent and convincing evidence through P.Ws.1 to 3; that it is true that there was some delay in registering the case; that the Investigation Officer has tendered explanation how the delay has occasioned; that since the case was originally registered under S.324 of I.P.C., the F.I.R. was not despatched as express one, but in the ordinary course, and thus, it has reached the court on 2.11.1992 , and hence, there was no delay as put forth by the appellant's side; that the medical evidence has thoroughly supported the testimonies of the witnesses; that though the appellant has given a single blow, it remains to be stated that he gave the blow on the skull of the deceased with M.O.1 koduval, which has caused fracture on the skull, and the same has directly led to the death of the victim; that the lower court was perfectly correct in relying on both the documents under Exs.P20 and P22 as dying declarations, since the author of those statements viz. the victim, died subsequently; that it is pertinent to note that at the time when the statements were recorded, no necessity was felt to obtain the attestation of the Doctors, since they were not considered as dying declarations that time; that it is pertinent to note that a case under S.324 of I.P.C. only has been registered, and only on the death of the victim, it has been converted to S.302 of I.P.C.; that only after careful consideration of the evidence adduced by the prosecution, the lower Court has found him guilty for murder and awarded him the suitable punishment, and henc e, the appeal has got to be dismissed.

10. The central evidence of the prosecution consisted of the testimonies of P.Ws.1 to 3 who were examined as eyewitnesses. According to those witnesses, they were doing agricultural operations around the lands of the deceased and the appellant. Admittedly, the deceased and the appellant owned adjacent lands. From the evidence of P.Ws.1 and 3 it would be quite evident that they were doing agricultural operations in the fields and in particular, on the day of occurrence. So far as P.W.2 was concerned, even according to his evidence, he had other avocations, and he was unable to say relevant particulars in respect of the filed under his cultivation. The same would cast a doubt whether he was engaged in the agricultural operation in any of the fields around the scene of occurrence. P.Ws.1 and 3 have given

consistent evidence as to the quarrel between the victim and the appellant at the time of occurrence in respect of the diversion of water course, and while the deceased diverted the water course, despite resistance by the appellant, he was attacked by the appellant with M.O.1 koduval on his head. The severely injured victim was taken to Thirukoilur hospital for treatment. The appellant is unable to show any reason or circumstance to disbelieve or reject their evidence. On the contrary, their evidence as to the occurrence is cogent, clinching and convincing.

11. The evidence of P.Ws.1 and 3 leaves no doubt that it was the appellant, who attacked the deceased on his head with koduval and caused the fatal injury. The victim who was taken to Thirukoilur Government Hospital after treatment for a few days, was taken to Government Hospital, Cuddalore, where x-ray was taken, and the skull injury was found. In view of the opinion of the Doctors attached to the Government Hospital, Cuddalore, the victim was admitted for treatment at General Hospital, Madras. Despite the effective treatment, he died on 11.11.1992. Though the case was originally registered under S.324 of I.P.C., on the death of the victim, it was converted to S.302 of I.P.C. P.W.18 Inspector of Police took up the investigation, conducted the inquest and sent the dead body of Gopal for postmortem. P.W.12 Doctor, who conducted the postmortem, has given Ex.P11 postmortem certificate and has also opined that the injury found on the skull and the corresponding internal injury was fatal and would have been caused by a weapon like M.O.1 koduval. It is pertinent to note that from the time of admission in Thirukoilur Hospital till his death, the victim was given effective treatment. In view of the available medical evidence, it cannot be disputed that the death has ensued as the direct consequence of the fatal injury caused by the accused at the time of occurrence, as stated above.

12. After careful consideration of the available materials, the Court has to necessarily disagree with the appellant's side. It is true that the occurrence has taken place at about 4.30 P.M. on 27.10.1992. Immediately, the victim was taken to Thirukoilur Government Hospital. From Ex.P1 accident register, it could be seen that the victim himself has made a statement to P.W.4 Dr.Girija that he was assaulted on 27.10.1992 at 5.30 P.M. at lake by known persons with koduval, and the Doctor has witnessed a lacerated wound on the right side of the scalp. Ex.P2 intimation was received at Thirukoilur Police Station, and in turn, it was sent to Rishivanthiam Police Station on 28.10.1992 . On receipt of the same, P.W.17 Sub Inspector proceeded to Thirukoilur Government Hospital and recorded Ex.P20 statement from the victim Gopal. It is pertinent to note that on the strength of the statement recorded from the victim, a case under S.324 of I.P.C. was registered. Subsequently, a statement under S.161 of Cr.P.C. was also recorded from the victim marked as Ex.P22, and on the death of the victim, both these statements have been treated as dying declarations. As rightly pointed out by the learned Additional Public Prosecutor, no necessity should have been felt by the police to get the attestation of the Doctor in those statements, since it was a case only under S.324 of I.P.C. that time. In both these statements, the victim has categorically narrated the motive and the occurrence. In view of the reasons adduced for the delay in recording the statement of the deceased, it cannot be stated that the prosecution has not satisfactorily explained the delay. That apart, in view of these statements of the victim under Exs.P20

and P22, the said delay does not assume any importance. True it is that the First Information Report has reached the Court only on 2.11.1992. But, it remains to be stated that the case was originally registered under S.324 of I.P.C., which did not call for sending any express report, and hence, the F.I.R. which was sent in the ordinary course, has reached the court on 2.11.1992, and thus, there was no delay at all. Thus, the contentions put forth by the appellant's side do not merit any acceptance.

13. The lower Court has found the appellant/accused guilty under S.302 of I.P.C. and awarded him life imprisonment. It is highly doubtful whether, in view of the facts and circumstances, the act of the accused could be termed as murder. Admittedly, there was a wordy quarrel between the appellant and the deceased as to the diversion of the water course. Despite resistance, the deceased has diverted the water course. The wordy quarrel and the act of the deceased in diverting the water course despite resistance should have given the sudden provocation for the accused to attack the deceased. The learned Additional Public Prosecutor fairly admitted that it was not a premeditated crime committed by the accused. Taking into consideration the facts and circumstances which preceded the commission of the crime and the proof available in that regard, it has to be held that the accused cannot be held liable for murder. But, however he has attacked the deceased on his skull with M.O.1 koduval, as a direct consequence of which the victim died, and hence, he is liable to be punished under S.304 Part I of I.P.C.

14. In the result, this criminal appeal is allowed to the extent of modifying the judgment of the court below as follows. The appelant is found guilty under S.304 Part I of I.P.C. and sentenced to undergo R.I. for seven years. The Sessions Judge shall take steps to commit the accused to prison, if he is on bail, to undergo the remaining period of sentence.

Index: Yes
Internet: Yes
16-9-2002

To:
1. The District and Sessions Judge, Villupuram.
2. The District Collector, Villupuram.
3. The Director General of Police, Chennai 4.
4. The Superintendent, Central Prison, Vellore.
5. The Public Prosecutor, Madras.
6. The Judicial Magistrate, Thirukoilur.
7. The Judicial Magistrate, Thirukoilur,
Through The Chief Judicial Magistrate, Villupuram.
8. The Inspector of Police, Thirukoilur, Villupuram
Ramasamy Padayachi District.

nsv/
P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.

Judgment
in
C.A.No.136 of 1995